

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

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UNITED STATES OF AMERICA,

Respondent/Plaintiff,

vs.

JAMES KENNETH DAILEY,

Petitioner/Defendant.

Case No.: 2:03-cr-00128-RLH-RJJ-1

ORDER

(Motion to Vacate – #94)
(Motion to Consider Motion to Vacate a
Protective Filing – # 95)

Before the Court are Petitioner/Defendant James Kenneth Dailey’s (“Dailey”) **Motion to Vacate, Set Aside, or Correct Criminal Convictions and Sentence Pursuant to 28 U.S.C. § 2255** (“Motion to Vacate”) (#94, filed June 8, 2016) and **Notice of Filing of Second or Successive Petition in the Ninth Circuit and Request to Consider Motion to Vacate Under 28 U.S.C. § 2255 (ECF No. 94) as a Protective Filing** (“Motion”) (#95, filed June 17, 2016).

In his Motion (#95) Dailey notifies the Court that he filed an application in the Court of Appeals for the Ninth Circuit (“Circuit Court”) for leave to file a second or successive § 2255 motion in light of the Supreme Court’s recent decision in *Johnson v. United States*, 135 S.Ct. 2551 (2015). Additionally, Dailey requests that this Court issue an order holding his Motion to Vacate (#94) in abeyance and deeming it filed *nunc pro tunc* to the date of the original filing. *See* First First Am.

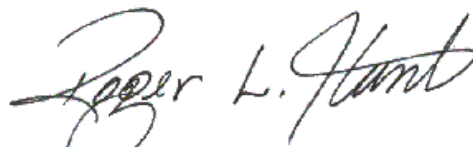
1 General Order 2015-03 (D. Nev. April 27, 2015); *see also Orona v. United States*, No. 16-70568, 2016
2 WL 3435692, at *2 (9th Cir. June 22, 2016) (per curium) (holding that “the filing of a second or
3 successive application in our court tolls the 1-year statute of limitations ... until our court rules on the
4 application”). The Court will grant Dailey’s Motion.

5 Accordingly, and for good cause appearing,

6 IT IS HEREBY ORDERED that Petitioner/Defendant James Kenneth Dailey’s Notice
7 of Filing of Second or Successive Petition in the Ninth Circuit and Request to Consider Motion to
8 Vacate Under 28 U.S.C. § 2255 (ECF No. 94) as a Protective Filing (#95) is GRANTED. Dailey’s
9 Motion to Vacate, Set Aside, or Correct Criminal Convictions and Sentence Pursuant to 28 U.S.C. §
10 2255 (#94) is stayed pending the Circuit Court’s consideration of his application to file a second or
11 successive § 2255 motion.

12 IT IS FURTHER ORDERED that the filing date of June 8, 2016 is preserved for statute
13 of limitations purposes under *Johnson v. United States*, 135 S.Ct. 2551 (2015).

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17 Dated: July 18, 2016

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20 **ROGER L. HUNT**
21 **UNITED STATES DISTRICT JUDGE**
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